

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS FERNANDEZ, LORA SMITH, and
TOSHA THOMAS, individually and on
behalf of a class of all other
persons similarly situated,

Plaintiffs,

v.

K-M INDUSTRIES HOLDING CO., INC., et
al.,

Defendants.

No. C 06-7339 CW

ORDER DIRECTING
FURTHER BRIEFING

Plaintiffs seek to hold Defendant North Star Trust Company liable for failing to remedy alleged breaches of fiduciary duties committed by other Defendants before North Star became the trustee of the Employee Stock Ownership Plan. Plaintiffs' theory of liability is based on 29 U.S.C. § 1105, which provides that a fiduciary "shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan . . . if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach."

1 In its reply in support of its motion for summary judgment,
2 North Star argues that it cannot be held liable under § 1105
3 because that statute applies only to co-fiduciaries, not to
4 successor fiduciaries. North Star asserts that liability for
5 successor fiduciaries is governed instead by 29 U.S.C. § 1109,
6 which provides, "No fiduciary shall be liable with respect to a
7 breach of fiduciary duty under this subchapter if such breach was
8 committed before he became a fiduciary or after he ceased to be a
9 fiduciary."

10 Because this argument was raised in North Star's reply,
11 Plaintiffs have not had an opportunity to respond to it.
12 Accordingly, Plaintiffs shall, by 12:00 p.m. on October 29, 2008,
13 file a supplemental brief, not exceeding five pages in length,
14 responding to this argument.

15 IT IS SO ORDERED.

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17 Dated: October 27, 2008



18 CLAUDIA WILKEN
19 United States District Judge
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